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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,877	03/22/2004	Hans Becker	4888-6	3871
22442	7590	09/21/2006	EXAMINER	
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			JOHNSON III, HENRY M	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/806,877	Applicant(s) BECKER ET AL.	
	Examiner Henry M. Johnson, III	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 7/23/06.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>032204 071504 032405 022306</u>   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The IDS dated February 23, 2006 included only four pages, yet the last page is labeled 4 of 13, indicating that some pages may be missing.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 27 recites the limitation "first and second output frequencies" in line 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 12-14, 16-20, 22 and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,221,095 to Van Zuylen et al. Van Zuylen et al. disclose a photon therapy unit with a flexible head for conforming to a body part to be treated. Treatment protocols are generated by a main control unit that formulates a treatment waveform from a set of treatment protocols. The selection of protocols is performed through a graphical user

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interface (GUI) that allows selection of treatment areas and customization of treatment as well as maintaining patient history and annotations (abstract). Van Zuylen et al. teach the use of visible wavelengths for photon therapy (Col. 1, line 15) and includes two treatment heads; one using light emitting diodes and the other laser diodes, each head having a dedicated microprocessor that stores the data of the head that is uploaded to the central processor for identification (Col. 9, lines 47-52). A display is disclosed that may display protocols and treatment parameters (Fig. 26). A key lock mechanism is provided to restrict use of the system (Col. 8, lines 55-56). The processors allow for programming treatment protocols and selection of pre-programmed regimens, such protocols including timing (Col. 9, line 22) and pulse repetition rates from 0.01 Hz to 100 kHz (Col. 9, line 36). A power supply is inherent in the operation of such a device.

Regarding claim 18, the visible spectrum includes the cited wavelengths.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 5, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,221,095 to Van Zuylen et al. as applied to claims 2 and 22 above, and further in view of U.S. Patent 6,783,523 to Qin et al. Van Zuylen et al. are discussed above, but do not teach the use of a resistance element in the identification of the treatment heads. Qin et al. teach a means for identifying different treatment heads by a system. A DEVICE HARDWARE CHECK function is disclosed that can be accomplished by including within the device an analog electrical element (e.g., a capacitor or resistor) or a solid-state element (micro-chip, ROM, EEROM, EPROM, or non volatile RAM) that generates an electrical value that differs depending upon the device present (Col. 14, line 59-67). Clearly, Qin et al. teach the resistor as an alternative equivalent to the memory of Van Zuylen et al. and therefore It would have been obvious to one skilled in the art to use a resistance element for device identification as taught by Qin et al. in the invention of Van Zuylen et al. as they have been established as equivalents.

Regarding claim 24, the actual circuit for implementing identification using resistance is considered an obvious design choice by a skilled artisan as no criticality is associated with the resistor in parallel with a switch.

Claims 7-11, 15, 21 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,221,095 to Van Zuylen et al. as applied to claims 1, 14 and 26 above, and further in view of U.S. Patent 6,872,221 to Lytle. Van Zuylen et al. are discussed above, but do not teach independent control of multiple light sources. Lytle discloses an apparatus for therapeutic treatment using an array with sets of laser diodes of three wavelengths, and with light emitting diodes of four wavelengths. The emitted laser and light beams overlap in a selected configuration. The method includes pulsing the diodes in one of several available

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selected frequency sequences. One of the available frequency sequences includes increasing frequency pulsing (abstract). Control electronics and power source are disclosed with the power source connecting to and powering the control electronics. The power source is preferably a rechargeable storage battery and is preferably rechargeable without removal from the housing. The control electronics connect to and provide electric power to diode array to individually activate and control the intensity of each of the first, second and third laser diodes and each of the first, second, third and fourth light emitting diodes. The control electronics 14 include current monitoring to assure precise intensity control. The control electronics can pulse each of the first, second and third laser diodes and each of the first, second, third and fourth light emitting diodes at a frequency of from about 0.1 Hz to 300 kHz in 0.01 Hz increments. It would have been obvious to one skilled in the art to include individual control of the light sources as taught by Lytle in the invention of Van Zuylen et al. to achieve a specific treatment result requiring variations of pulse frequencies dependent on thermal relaxation times or temperature considerations.

### ***Conclusion***

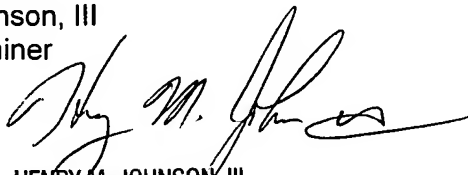
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Henry M. Johnson, III  
Primary Examiner  
Art Unit 3739



HENRY M. JOHNSON, III  
PRIMARY EXAMINER